

FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re) Case No. 09-25459-E-13
ROBIN TERESA MARTIN,)
Debtor.)
_____))
ROBIN TERESA MARTIN,) Adv. Pro. No. 12-2596
Plaintiff,)
v.)
CITIFINANCIAL SERVICES, INC.,)
Defendant.)
_____)

MEMORANDUM OPINION AND DECISION

On October 4, 2012, Robin Teresa Martin ("Plaintiff") commenced this Adversary Proceeding for a determination that the lien, encumbrance, and interest asserted by CitiFinancial Services, Inc. ("Defendant"), in real property commonly known as 41 Monarch Drive, Oroville, California (the "Property") pursuant to a deed of trust ("Deed of Trust") are void and of no force and effect. The default of Defendant was entered on December 12, 2012.¹ As ordered by the court, Plaintiff filed and served the present motion for entry of a default judgment.

¹ Dckt. 13.

1 Defendant filed a proof of claim on May 1, 2009 ("Proof of
2 Claim"), asserting that its claim in the amount of \$52,294.71 was
3 secured by the Property pursuant to a Deed of Trust ("Secured
4 Claim").² A copy of the Deed of Trust, bearing a recording date of
5 May 7, 2008, Document No. 2008-17334, with the County Recorder for
6 the County of Butte, California, is attached to the Proof of Claim.

7 In her Chapter 13 bankruptcy case, the Plaintiff filed a
8 motion for the court to determine the value of Defendant's Secured
9 Claim pursuant to 11 U.S.C. § 506(a). On August 27, 2009, the
10 court issued an order determining that the Defendant's Secured
11 Claim has a value of \$0.00, with the balance constituting
12 Defendant's general unsecured claim ("Unsecured Claim") which is
13 paid as provided in the Plaintiff's confirmed Chapter 13 Plan.³

14 The court issued an order confirming Plaintiff's Chapter 13
15 Plan in her bankruptcy case on May 29, 2009.⁴ The confirmed
16 Chapter 13 Plan provides for the payment of \$0.00 for Defendant's
17 Secured Claim (the valued determined by the court pursuant to
18 11 U.S.C. § 506(a)) as a Class 2 Secured Claim. Defendant's
19 Unsecured Claim is provided for in the Chapter 13 Plan to be paid
20 as a Class 7 general unsecured claim.⁵ The Plaintiff completed her
21 Chapter 13 Plan and the court granted the Plaintiff a discharge on
22
23

24 ² Proof of Claim No. 1, Bankr. E.D. Cal. 09-25495.

25 ³ Civil Minutes and August 27, 2009 Order, Bankr. E.D. Cal.
26 09-25459 Dckts. 17, 24.

27 ⁴ Confirmation Order, Bankr. E.D. Cal. 09-25459 Dckt. 21.

28 ⁵ Chapter 13 Plan, Bankr. E.D. Cal. 09-25459 Dckt. 5.

1 October 1, 2012.⁶

2 **LIEN IS TERMINATED AND RENDERED VOID BY COMPLETION OF**
3 **CHAPTER 13 PLAN AND PAYMENT OF SECURED CLAIM IN AMOUNT**
4 **DETERMINED BY COURT PURSUANT TO 11 U.S.C. § 506(a)**

5 Jurisdiction for this Adversary Proceeding exists pursuant to
6 28 U.S.C. §§ 1334 and 157(a), and the referral of bankruptcy cases
7 and all related matters to the bankruptcy judges in this District.
8 E.D. Cal. Gen Order 182, 223. This Adversary Proceeding is a core
9 matter arising under Title 11, including 11 U.S.C. §§ 506(a) and
10 (d), 524, 541 1325, 1326, 1327, and 1328. 28 U.S.C.
11 § 157(b)(2)(A), (B), (K), (L), and (O). Proper service of the
12 Summons and Complaint, Request for Entry of Default, Entry of
13 Default, and Motion for Entry of Summary Judgment have been
14 provided. No objection has been made by the Defendant to any
15 proceedings before this court in this Adversary Proceeding or the
16 bankruptcy case, including the determination of the value of its
17 Secured Claim or confirmation of the Chapter 13 Plan providing for
18 Defendant's Secured Claim and Unsecured Claim.

19 Plaintiff requests that the court determine that the
20 Defendant's Deed of Trust is of no force and effect, and does not
21 encumber the Property. This request is commonly called a "quiet-
22 title action" to settle and determine conflicting claims to
23 property, which results in a decree to each party as to their
24 respective interests in the subject property. 53 CALIFORNIA
25 JURISPRUDENCE: QUIETING TITLE § 1 (Leslie Larsen ed. 3rd ed.). Pursuant
26 to California Code of Civil Procedure Section 760.020, an action
27 may be brought to "establish title against adverse claims to real

28 ⁶ Notice of Completed Plan Payments and Discharge, Bankr.
E.D. Cal. 09-25459 Dckts. 50, 55.

1 or personal property or any interest therein." Civil Procedure
2 Section 760.030(b) provides, "[i]n an action or proceeding in which
3 establishing or quieting title to property is in issue the court in
4 its discretion may, upon motion of any party, require that the
5 issue be resolved pursuant to the provisions of this chapter."
6 This determination is necessary as part of the federal bankruptcy
7 claims process and to give effect to the completed confirmed
8 Chapter 13 Plan and Order confirming the Plan. Federal Rule of
9 Civil Procedure 70 and Federal Rule of Bankruptcy Procedure 7070
10 provide for the bankruptcy court to issue judgments and orders
11 divesting and vesting title to property.

12 **Effect of Completed Chapter 13 Plan**

13 The confirmation of a Chapter 13 Plan modifies the rights and
14 obligations in the bankruptcy debtor-creditor relationship. For a
15 creditor holding a secured claim, the claim is determined and
16 provided for in the bankruptcy plan in the following manner.
17 First, pursuant to 11 U.S.C. § 506(a), the court determines which
18 portion of the claim is the creditor's secured claim and what
19 portion is that creditor's unsecured claim. As a matter of federal
20 bankruptcy law, a creditor's allowed claim is a secured claim only
21 to the extent that there is value in the collateral which secures
22 the claim,

23 (a)(1) An allowed claim of a creditor...is a secured
24 claim to the extent of the value of such creditor's
25 interest in the estate's interest in [the property
26 securing the claim],... and an unsecured claim to the
27 extent that the value of such creditor's interest...is
28 less than the amount of such allowed claim.

27 11 U.S.C. § 506(a). As provided in this statute, the balance of
28 the allowed claim is an unsecured claim of that creditor in the

1 bankruptcy case.⁷

2 Second, the debtor must have a confirmed Chapter 13 Plan that
3 provides for both the secured and unsecured claims of that
4 creditor. Pursuant to 11 U.S.C. § 1327, the provisions of the
5 confirmed plan bind the debtor and each creditor. It is the
6 Chapter 13 Plan, by which the debtor commits him or herself, which
7 becomes the modified contract between the debtor and creditors.
8 *Hillis Motors v. Hawaii Automobile Dealers' Association (In re*
9 *Hillis Motors)*, 997 F.2d 581, 588 (9th Cir. 1993) (A confirmed
10 reorganization plan resembles a consent decree and should be
11 construed basically as a contract); *Max Recovery v. Than (In re*
12 *Than)*, 215 B.R. 430, 435 (9th Cir. B.A.P. 1997). ("Another way of
13 looking at the binding effect of confirmation is that the plan is
14 a contract between the debtor and the debtor's creditors.") The
15 order confirming a Chapter 13 plan, upon becoming final, represents
16 a binding determination of the rights and liabilities of the
17 parties as specified by the plan. 8 COLLIER ON BANKRUPTCY ¶ 1327.02
18 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.); *Trulis v.*
19 *Barton*, 107 F.3d 685, 691 (9th Cir. 1995) (Confirmed plan is binding
20 on all parties and entitled to *res judicata* effect).

21 Third, the debtor pays the full amount of the secured claim as
22 determined pursuant to 11 U.S.C. § 506(a) through the terms of the
23

24 ⁷ This highlights a significant difference in how debts are
25 addressed under state law and the Bankruptcy Code. State law commonly
26 defines debts based on the creditor, referring to someone being a
27 "secured creditor" (if there is some collateral to secure the debt)
28 and an "unsecured creditor" (if there is no collateral to secure the
debt). However, under the Bankruptcy Code there are just "creditors."
A creditor may have a priority claim, a secured claim, an unsecured
claim, or that one creditor may have a combination of multiple claims
arising out of one original obligation.

1 confirmed plan. Upon completion of the Chapter 13 Plan which
2 provides for the § 506(a) determined secured claim, there is no
3 remaining obligation secured by the lien.

4 Fourth, the debtor demands reconveyance of the deed of trust
5 or release of the lien, for which no obligation remains to be paid
6 after completion of the Chapter 13 Plan, pursuant to the terms of
7 the underlying note, deed of trust, security instrument, applicable
8 non-bankruptcy law, or 11 U.S.C. § 506(d).⁸

9 While this process is commonly referred to as a "lien strip,"
10 such is not a completely accurate statement of the legal effect of
11 the confirmed and completed Chapter 13 plan, the Bankruptcy Code,
12 orders of the bankruptcy court, and operation of California state
13 law. Neither the § 506(a) valuation nor confirmation of the
14 bankruptcy plan by the court removes or "strips" the lien from the
15 property. Rather, upon the completion of the Chapter 13 plan and
16 payment of the value of the secured claim determined as a matter of
17 federal law under the Bankruptcy Code, there is no obligation
18 remaining to be secured by the lien.

19 A mortgage (as a lien on real property) does not itself bind
20 the person giving the mortgage to perform the act which is secured.
21

22 ⁸ 11 U.S.C. § 506(d) provides that a lien is void to the extent
23 that there is not an allowed secured claim,

24 (d) To the extent that a lien secures a claim against the
25 debtor that is not an allowed secured claim, such lien is
void, unless-

26 (1) such claim was disallowed only under section
502(b)(5) or 502(e) of this title; or

27 (2) such claim is not an allowed secured claim due only
28 to the failure of any entity to file a proof of such claim
under section 501 of this title.

1 Cal. Civil. Code § 2928. A deed of trust, which provides real
2 property security for an obligation, is substantially treated as
3 mortgage with a power of sale. *Bank of Italy National Trust &*
4 *Savings Association v. Bentley*, 217 Cal 644, 657 (1933), cert.
5 denied 290 U.S. 659.

6 A lien or security interest cannot exist without an underlying
7 obligation to be secured. *Alliance Mortgage Co. v. Rothwell*,
8 10 Cal. 4th 1226, 1235 (1995). The lien or security interest, as
9 accessory to the debt it secures, does not have any additional,
10 independent validity once there is no longer an obligation to be
11 secured. See 4 WITKIN SUMMARY OF CALIFORNIA LAW, TENTH EDITION, § 47.
12 California Civil Code § 2909 provides that a lien is "[d]eemed
13 accessory to the act for the performance of which it is a
14 security..."

15 This fundamental requirement that a valid, enforceable lien is
16 dependent on an obligation to be secured is not a new legal
17 principle. In *Coon v. Shry*, 209 Cal. 612, 615 (1930), the
18 California Supreme Court stated,

19 It is well settled in California that a mortgage or
20 mortgage lien is a mere incident of the debt or
21 obligation which it is given to secure. (Cal. Civ. Code,
22 sec. 2909; 17 Cal. Jur. 710, sec. 27, and cases cited in
23 footnote 11.) There cannot be a mortgage if there is no
24 debt or other obligation to be secured. (*Holmes v.*
25 *Warren*, 145 Cal. 457, 463; *Todd v. Todd*, 164 Cal. 255,
258; *Ahern v. McCarthy*, 107 Cal. 382, 386.) A mortgage
in California has no existence independent of the thing
secured by it. (*Estate of Fair*, 128 Cal. 607, 613;
People v. Eastman, 25 Cal. 601, 603.) As distinguished
from the debt the mortgage has no determinate value.
(*Nagle v. Macy*, 9 Cal. 426.)

26 This basic principle was simply restated by the California Court of
27 Appeal in *First American Title Insurance Company v. XWarehouse*
28 *Lending Corp.*, 177 Cal. App. 4th 106, 116 (2009), as, "Unless there

1 is an existing indebtedness between the named borrower and lender
2 the mortgage has no existence."

3 As a matter of California law, once an obligation no longer
4 exists to be secured by the lien, the lien is void. A trustor or
5 mortgagor, such as the Plaintiff, who gave the lien to secure an
6 obligation which no longer exists, is entitled to a certificate of
7 discharge, the mortgage cancelled or satisfied as of record, and
8 the deed of trust reconveyed.⁹

9 The contract embodied in the confirmed Chapter 13 Plan, fully
10 performed upon completion of the Chapter 13 Plan, permanently fixes
11 the value of Defendant's Secured Claim at \$0.00, resulting in the
12 Defendant having no secured claim. Federal law having determined
13 the value of the secured claim and completion of the confirmed
14 Chapter 13 Plan establishing that no obligation remaining to be
15 secured by the Deed of Trust, Defendant is required under the terms
16 of the note, Deed of Trust, and applicable state law to reconvey
17 the Deed of Trust.

18 **Defendant's Lien is Void by Operation of Federal Law**

19 In addition to state law, 11 U.S.C. § 506(d) provides that to
20 the extent a claim against the debtor is not an "allowed secured
21 claim," such lien securing the claim is void. The Supreme Court
22 has determined that this provision does not work to void a lien in
23 a Chapter 7 liquidation. *Dewsnup v. Timm*, 502 U.S. 410, 416
24 (1992). In concluding that § 506(d) would not apply to a Chapter 7
25

26 ⁹ 4 WITKIN SUMMARY OF CALIFORNIA LAW, TENTH EDITION, § 117, citing
27 California Civil Code § 2939 et seq.; Rest.3d, Property
28 (Mortgages) § 6.4; 4 Powell § 37.33; C.E.B., 2 Mortgage and Deed
of Trust Practice 3d, § 8.84; and 13 Am.Jur. Legal Forms 2d,
§ 179:511.

1 case, the Supreme Court considered the long history under the
2 bankruptcy laws by which a bankruptcy discharge did not impair a
3 creditor's lien. However, the Supreme Court noted that
4 reorganizations under the Bankruptcy Act permitted the involuntary
5 reduction of the amount of a creditor's lien for reason other than
6 payment of the debt. *Id.*, citing 11 U.S.C. §§ 616(1) and (10) of
7 Bankruptcy Act.

8 The Ninth Circuit Court of Appeals addressed the issue of
9 determining a creditor's secured and unsecured claims pursuant to
10 11 U.S.C. § 506(a) in the context of a Chapter 13 case in *Zimmer v.*
11 *PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002).
12 At issue was whether the anti-modification provisions of 11 U.S.C.
13 § 1322(b) (2) precluded a valuation of a creditor's secured claim
14 for which there was no value in the collateral (the senior lien
15 exhausting the value of the collateral).¹⁰ In *Zimmer*, the creditor
16 argued that notwithstanding there being no value in the collateral
17 to secure its claim, it held a claim secured only by the debtor's
18 residence. Therefore, it was asserted that the claim could not be
19 valued at \$0.00 since it could not be modified in the Chapter 13
20 case. *Id.* at 1222.

21 Building from the foundation of the Supreme Court's holding in
22

23 ¹⁰ The anti-modification provision of 11 U.S.C. § 1322(b) (2)
24 state,

25 (b) Subject to subsections (a) and (c) of this section, the
26 plan may- ...

27 (2) modify the rights of holders of secured claims, other
28 than a claim secured only by a security interest in real
property that is the debtor's principal residence, or of
holders of unsecured claims, or leave unaffected the rights
of holders of any class of claims;....

1 *Nobelman v. American Saving Bank (In re Nobelman)*, 968 F.2d 483,
2 488 (5th Cir. 1992),¹¹ the Ninth Circuit Court of Appeals concluded
3 that the creditor was not a "holder of a secured claim" merely
4 because it held a claim secured by collateral for which there was
5 no value for that creditor's junior lien. *Zimmer*, 313 F.3d at 1223.
6 The court explained the term "holder of a claim secured only by a
7 security interest..." is not the same as the term "secured claim,"
8 noting that the latter is a term of art used under the Bankruptcy
9 Code.

10 Section 506(a) divides creditors' claims into "secured
11 claims" and "unsecured claims." Although the conventional
12 interpretation of "secured" might include any claim in
13 which the creditor has a security interest in the
debtor's property, § 506(a) makes clear that the status
of a claim depends on the valuation of the property...

14 To put it more simply, a claim such as a mortgage is not
15 a "secured claim" to the extent that it exceeds the value
16 of the property that secures it. Under the Bankruptcy
17 Code, "secured claim" is thus a term of art; not every
18 claim that is secured by a lien on property will be
19 considered a "secured claim." Here, it is plain that PSB
Lending's claim for the repayment of its loan is an
unsecured claim, because its deed of trust is junior to
the first deed of trust, and the value of the loan
secured by the first deed of trust is greater than the
value of the house.

20 *Id.*

21 The Ninth Circuit concluded that the use of a bankruptcy plan
22 to avoid a creditor's lien for a claim which is wholly unsecured is
23 consistent with the Supreme Court's holding in *Nobelman*, giving
24

25
26 ¹¹ In *Nobelman*, the Supreme Court determined that the anti-
27 modification provision of § 1322(b)(2) precluded the debtor from
28 obtaining a § 506(a) valuation of the creditor's claim and providing
for the secured claim only in an amount equal to the value in the
property securing the claim.

1 effect to both § 1322(b) (2) and § 506(a) of the Bankruptcy Code.¹²
2 The Bankruptcy Appellate Panel for the Ninth Circuit in *Lam v.*
3 *Investors Thrift (In re Lam)*, 211 B.R. 36, 40 (B.A.P. 9th Cir.
4 1997)¹³ previously held that the *Nobleman* Supreme Court decision did
5 not apply to holders of totally unsecured claims.¹⁴

6
7 ¹² This application of § 1322(b) and § 506(a) to bifurcate a
8 creditor's claim and provide for payment of the § 506(a) secured and
9 unsecured portions through the Chapter 13 Plan is followed by the
10 majority of courts addressing this issue. See, *Eastern Savings Bank,*
11 *FSB v. LaFata (In re LaFata)*, 483 F.3d 13 (1st Cir. 2007), *Lane v.*
12 *Western Interstate Bancorp. (In re Lane)*, 280 F.3d 663 (6th Cir.
13 2002); *Pond v. Farm Specialist Realty (In re Pond)*, 252 F.3d 122 (2d
14 Cir. 2001); *Tanner v. FirstPlus Financial, Inc. (In re Tanner)*, 217
15 F.3d 1357 (11th Cir. 2000); *Bartee v. Tara Colony Homeowners Ass'n (In*
16 *re Bartee)*, 212 F.3d 277 (5th Cir. 2000); *McDonald v. Master*
17 *Financial, Inc. (In re McDonald)*, 205 F.3d 606 (3d Cir. 2000); *Fisette*
18 *v. Keller (In re Fisette)*, 455 B.R. 177 (B.A.P. 8th Cir. 2011); *First*
19 *Mariner Bank v. Johnson (In re Johnson)*, 411 B.R. 221 (DC Md 2009),
20 *affrm. First Mariner Bank v. Johnson (In re Johnson)*, 2011 U.S. App.
21 LEXIS 402 (4th Cir. 2011); *Griffey v. U.S. Bank (In re Griffey)*, 335
22 B.R. 166 (B.A.P. 10th Cir. 2005) (affirmed for reasons stated in the
23 district court ruling); *Domestic Bank v. Mann (In re Mann)*, 249 B.R.
24 831 (B.A.P. 1st Cir. 2000); *Lam v. Investors Thrift (In re Lam)*, 211
25 B.R. 36 (B.A.P. 9th Cir. 1997).

26
27 ¹³ Appeal dismissed on other grounds without consideration of the
28 merits of the Bankruptcy Appellate Panel's holding. See 192 F.3d 1309,
1311 (9th Cir. 1999).

19 ¹⁴ The Ninth Circuit Bankruptcy Appellate Panel stated that the
20 *Nobelman* decision prohibiting the removal of a partially unsecured
21 claim is decidedly different from requiring a chapter 13 debtor to
22 continue to pay the mortgage contract when the mortgage lien attaches
23 to nothing and the lien ceases to be a secured claim. The court
24 stated that an analysis of the state law "rights" afforded a holder of
25 an unsecured "lien," if such a situation exists, indicates these
26 rights are empty rights from a practical, if not a legal, standpoint.
27 *Id.* at 40. For instance, a forced sale of the property would not
28 result in any financial return to the lienholder, even if a forced
sale could be accomplished where the lien attaches to nothing. *Id.*
The court stated "[n]othing secures the 'right' of the lienholder to
continue to receive monthly installment payments, to retain the lien
until the debt is paid off, or the right to accelerate the loan upon
default, if there is no security available to the lienholder to
foreclose on in the event the debtor fails to fulfill the contract
payment obligations." See also *In re Williams*, 161 B.R. 27, 29-30
(Bankr. E.D. Ky. 1993) (stating that *Nobelman's* reference to section
506(a) is "meaningless unless some portion of the claim be secured

1 In the Plaintiff's bankruptcy case this court determined that
2 the value of the creditor's interest in the estate's interest in
3 the Property was \$0.00.¹⁵ The order determining the Defendant's
4 secured claim is a final and non-appealable order. The Plan having
5 been completed, there only remains (after resolution of this
6 Adversary Proceeding) the closing of the case by the Clerk of the
7 Court.

8 The confirmed Chapter 13 Plan, embodying the modified
9 "contract" between Plaintiff and Defendant, as permitted by
10 11 U.S.C. § 1322(b)(2), has been fully performed by the Plaintiff.
11 The confirmed Chapter 13 Plan being binding on the Plaintiff and
12 Defendant as provided in 11 U.S.C. § 1327(a), this results in
13 Defendant's Secured Claim determined pursuant to 11 U.S.C. § 506(a)
14 to be permanently fixed as a \$0.00 obligation.¹⁶ This Secured Claim
15 having no value, Defendant does not have an allowed secured claim
16 as that term is defined in 11 U.S.C. § 506(d). The Confirmed Plan
17 having been completed, fixing the modified rights and obligations,
18 and the Defendant having no allowed secured claim, Defendant's lien
19

20
21 under § 506(a) analysis before the creditor is entitled to retain the
22 rights it has under state law").

23 ¹⁵ Civil Minutes and Order, Dckts. 17, and 25, Bankr. E.D. Cal.
09-25459.

24 ¹⁶ Prior to completing the Chapter 13 Plan, a debtor could
25 default on the terms of the plan and breach the modified contract. In
26 such situations a debtor may modify the plan, if possible, or the case
27 is dismissed. If dismissed, then there is no payment of a secured
28 claim through the plan. Additionally, 11 U.S.C. § 349(b)(1)(C)
provides that unless the court orders otherwise, any lien voided
pursuant to § 506(d) is reinstated. By the time a plan is completed,
very few, if any, grounds exist by which a Chapter 13 case could be
dismissed pursuant to 11 U.S.C. § 1307.

1 against the Property is void by operation of 11 U.S.C. § 506(d).¹⁷

2 **Requirement for Creditor to Reconvey Deed of Trust**

3 California Civil Code § 2941(b)(1) imposes an affirmative
4 obligation on the beneficiary (creditor) when the obligation
5 secured by the deed of trust has been satisfied. When no
6 obligation remains, the beneficiary must instruct the trustee under
7 the deed of trust to issue a full reconveyance of the deed of
8 trust. As addressed above, once the obligation no longer exists,
9 resulting in the lien being extinguished by operation of law, the
10 trustor or mortgagor (debtor) is entitled to a certificate of
11 discharge, the mortgage cancelled or satisfied as of record, and
12 the deed of trust reconveyed. See *supra* footnote 9.

13 In addition to this statutory obligation to have the deed of
14 trust reconveyed, the standard form deeds of trust, used by the
15 Defendant and other institutional lenders, include a provision
16 requiring the deed of trust to be reconveyed upon satisfaction of
17 the obligation secured by the deed of trust. Paragraph 20 of the
18 Deed of Trust provides that Defendant shall reconvey the Deed of
19 Trust upon payment of the sums secured by the Deed of Trust. Proof
20 of Claim No. 1 Attachment Bankr. E.D. Cal. 09-25459. The fixing of
21 the Secured Claim to be \$0.00 by the completion of the Chapter 13
22 Plan, there remain no sums secured by the Deed of Trust to be paid.

23 The Deed of Trust, Paragraph 7, also provides for attorneys'
24

25 ¹⁷ Neither of the two exceptions specified by Congress in
26 11 U.S.C. § 506(d)(1) and (2) are applicable. Additionally, no motion
27 to dismiss or other basis for dismissal of the bankruptcy case has
28 been presented to the court. Therefore, the provision of 11 U.S.C.
§ 349(b)(1)(C) allowing for the reinstatement of a lien avoided by
§ 506(d) is not applicable to this matter now before the court.

1 fees and costs to be paid by Plaintiff in the event of a default
2 under the Deed of Trust or obligation which the Deed of Trust
3 secures. Defendant did not provide a copy of the note which is
4 secured by the Deed of Trust as an attachment to its Proof of
5 Claim. It is likely that the note contains a similar attorneys'
6 fee provision, as such is common in institutional promissory notes.
7 Pursuant to California Civil Code § 1717, Plaintiff is entitled to
8 enforce a right to recover attorneys' fees and expenses for
9 Defendant's defaults under the Deed of Trust and obligation it
10 secures.

11 **ENTRY OF DEFAULT JUDGMENT PROPER**

12 Even when a party has failed to respond to a complaint and its
13 default has been entered, a plaintiff is not entitled to a default
14 judgment as a matter of right. 10 *Moore's Federal Practice -*
15 *Civil*, ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd
16 ed.). Entry of a default judgment is within the discretion of the
17 court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).
18 Default judgments are not favored, as the judicial process prefers
19 determining cases on their merits whenever reasonably possible. *Id.*
20 at 1472. Factors which the court may consider in exercising its
21 discretion include:

- 22 (1) the possibility of prejudice to the plaintiff,
- 23 (2) the merits of plaintiff's substantive claim,
- 24 (3) the sufficiency of the complaint,
- 25 (4) the sum of money at stake in the action,
- 26 (5) the possibility of a dispute concerning material facts,

27 ///

28 ///

1 (6) whether the default was due to excusable neglect, and

2 (7) the strong policy underlying the Federal Rules of Civil
3 Procedure favoring decisions on the merits.

4 *Id.* at 1471-72 (citing 6 *Moore's Federal Practice - Civil*, ¶ 55-
5 05[s], at 55-24 to 55-26). In determining whether to exercise its
6 discretion, courts also consider the factors traditionally used to
7 determine whether a default judgment should be set aside:
8 (a) whether the default was willful or culpable; (b) whether
9 granting relief from the default would prejudice the opposing
10 party; and (c) whether the defaulting party has a meritorious
11 defense. *Id.*

12 Applying these factors, the court finds that the Plaintiff
13 will be prejudiced if the second deed of trust is not reconveyed,
14 or the court does not enter judgment determining the Deed of Trust
15 is void and the property held free of such purported interests
16 thereunder. The continued existence of record of the Deed of Trust
17 will cloud title and restrict Plaintiff's full and unfettered use
18 of her real property and her interests therein.

19 The court finds that the Complaint is sufficient and the
20 requests for relief requested therein are meritorious. It has not
21 been shown to the court there is or may be any dispute concerning
22 material facts. Defendant CitiFinancial Services, Inc. has not
23 contested any facts in this Adversary Proceeding, nor did it
24 dispute facts presented in the Plaintiff's bankruptcy case
25 regarding the motion to value Defendant's secured claim to have a
26 value of \$0.00 or confirmation of the Chapter 13 Plan. Further,
27 there is no evidence of excusable neglect by the Defendant.
28 Although the Federal Rules of Civil Procedure favor decisions on

1 the merits through the crucible of litigation, Defendant has been
2 given several opportunities to respond and there is no indication
3 that Defendant has a meritorious defense or disputes Plaintiff's
4 right to judgment in this Adversary Proceeding. Failing to fulfill
5 one's contractual and statutory obligations, and then failing to
6 respond to judicial process, is not a basis for denying relief to
7 an aggrieved plaintiff.

8 The court finds that it is necessary and proper for the entry
9 of a default judgment against the Defendant.

10 **CONCLUSION**

11 Upon consideration of the Complaint, Motion for Entry of a
12 Default Judgment, and evidence presented, the court finds that
13 relief as requested in the Complaint to quiet title to the real
14 property commonly known as 41 Monarch Drive, Oroville, California,
15 and reconveyance the second deed of trust to Plaintiff is necessary
16 and proper. The court finds that Robin Teresa Martin, the
17 Plaintiff, is entitled to judgment quieting title, determining that
18 the Deed of Trust recorded on May 7, 2008, with the County Recorder
19 for Butte County, California, Document No. 2008-0017334, and any
20 interest, lien or encumbrance pursuant thereto, against the real
21 property commonly known as 41 Monarch Drive, Oroville, California,
22 is void, unenforceable, and of no force and effect. Further, that
23 CitiFinancial Services, Inc., the Defendant, has no interest in
24 said Property.

25 The Motion for Entry of Default Judgment is granted and
26 judgment shall be entered for Plaintiff consistent with this
27 decision that Defendant's Deed of Trust is void and Defendant has
28 no interest in the Property. Plaintiff shall file a bill of costs

1 and motion for attorneys' fees and expenses, if any, on or before
2 **April 26, 2013.**¹⁸ The court shall issue an order consistent with
3 this Decision.

4 This Memorandum Opinion and Decision constitutes the court's
5 findings of fact and conclusions of law pursuant to Federal Rule of
6 Civil Procedure 52 and Federal Rule of Bankruptcy Procedure 7052.

7 Dated: April 10, 2013

8
9 /s/

10 RONALD H. SARGIS, Judge
11 United States Bankruptcy Court
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15 ¹⁸ The court is gravely concerned with Defendant's failure to
16 respond to Plaintiff's requests to reconvey the Deed of Trust after
17 completion of the Chapter 13 Plan. While of minimal cost and expense
18 to Defendant to comply with its contractual and statutory obligations
19 to reconvey the Deed of Trust and clear title for the consumer
20 Plaintiff, it has failed to fulfill its contractual and statutory
21 obligations. This places an unreasonable and unnecessary burden on
the average consumer debtor. Most benignly, one could assume that
such a creditor is merely trying to save a few pennies by making the
consumer bear the cost of clearing title. For those with a more
sinister bent, one could think that such creditors are attempting to
slander title to the consumer's property to try and leverage an
unwarranted payment later to release the void lien as of record.

22 A consumer debtor and the court do not serve as a "for free title
23 department" processing reconveyances for a creditor. Prevailing
24 plaintiffs may seek recovery of their attorneys' fees and expenses, as
25 this Plaintiff has, for the reasonable attorneys' fees and costs to
26 clear a cloud on title following completion of a confirmed Chapter 13
27 Plan. Such litigation requires an experienced, sophisticated attorney
28 who understands the interplay between state real property law and
federal bankruptcy law to effectively prosecute an action to enforce
the Plaintiff's rights obtained through completion of the Chapter 13
Plan. Such attorneys' fees are not inexpensive, as the Plaintiff must
go through multiple steps in not only filing and properly serving the
Complaint, and having the default entered, but prosecuting a motion
providing the court with the sufficient legal and evidentiary basis
for entry of a judgment in the litigation.